IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4666 of 2007
To
SPECIAL CIVIL APPLICATION No. 4667 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJA MEHULKUMAR PITHABHAI & 1 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR JK PARMAR for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
None for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 06/03/2007

ORAL JUDGMENT

Heard the learned advocate Mr. JK Parmar on

behalf of the petitioner, learned AGP Mr. Vipul Mistry appearing for respondent.

Today, learned advocate Mr. Parmar placed the draft amendment on record, which has been allowed with a direction to the petitioner to carry out the same within a period of one week from today.

The grievance of the present petitioner is that, the respondent no. 3 published an advertisement inviting applications for appointment against 644 posts of Vidhya Sahayak in various Primary Schools within the Junagadh District, at annexure A. Annexure A is advertisement for the year of 2004 dated 9/7/2004. According to the petitioner, he possessed qualification of C.P.Ed. while petitioner no. 2 possessed qualification of B. Ed. The respondent no. 3 had prepared list of 644 posts, and also prepared one more wait list of 100 candidates. The respondent no. 3 had issued interview calls to the petitioners on 21/10/2004 and also issued letter dated 31/10/2004 for selecting the place of service of both the petitioners by intimating to remain present at District Education and Training Bhavan, Bilkha Road, Junagadh on 9/11/2004.

This Court (Coram : Hon'ble Ms. R.M.Doshit, J) had directed the Government to fill up the post of candidate of C.P.Ed also.

According to the petitioners, some of the

candidates of one list of 100 candidates have approached this Hon'ble Court by filing SCA 15765/2004 which was admitted by this Court and the said petition is pending before this Hon'ble Court.

However, according to the petitioner, inspite of unsolved case of 100 candidates of one more wait list, the respondent no. 3 had issued new advertisement inviting the new applications for the post of 738 by an advertisement on 24/1/2007. Therefore, present petition is filed.

According to the petitioners, they are selected candidates of one more additional list of candidates and petitioners are having no other alternative remedy, therefore, present petition is filed.

Today, in the draft amendment, the contentions raised by the petitioners that applicants are protected in pursuant to the oral order dated 10/7/2006 passed in Misc. Civil Application no. 392/2006 in Special Civil Application no. 192/2006 and allied contempt applications, where applicant is eligible and entitled for his appointment as Vidhya Sahayak as he has been already selected and his name is in the waiting list. The copy of order dated 10/7/2006 is at Annexure F.

Learned advocate Mr. Parmar relied upon the order of the Division Bench of this Court dated 10/7/2006 and submitted that this Court has directed

to the District Primary Education Officer to give appointment to the person who are on the waiting list in order of their merits to the posts which have become vacant on account of non joining by the selected candidates or upon resignation given by the selected candidates subject to the limit of posts advertised. Therefore, Division Bench has observed that this will have to be implemented within a period of one month.

In view of the above observations made by the Division Bench of this Court, learned advocate Mr. Parmar relied upon the letter dated 7/7/2006 addressed to the Director of Primary Education, by State Government that order passed by this Court has not been challenged to the Higher forum, therefore, due to resignation, if any post is found to be vacant from the selection of year 2004, they should have to fill up the post by candidates from the waiting list. The period of one year of the wait list of 2004 is exempted by the State Government. Therefore, learned advocate Mr. Parmar submitted that petitioner is entitled to appoint on the basis of the fact that he was selected and his name is included in the waiting list.

I have considered the submissions made by learned advocate Mr. Parmar and I have also perused the order passed by the Division Bench of this Court as well as the letter dated 7/7/2006 addressed to the Director of Primary Education, by State Government.

The question that if any candidate has been selected and his name has been included in the select list /waiting list, whether such candidate is having any legal right to be appointed or not. The second question is that select list is having one year period to be remained in operation which was exempted by the State Government for the selection of wait list 2004 only. If any vacancy is accured due to resignation, death and non-reporting by the candidates, same can be filled up from the candidate of waiting list of 2004.

In view of these facts, the observation made by the Division Bench of this Court is relevant, therefore, it is to be considered that the Division Bench has observed in para 4 in Misc. Civil Application no. 392 of 2006 in Special Civil Application no. 192 of 2006 and group matter dated 10/7/206, quoted as under:

> "In pursuance of the above statement made by the learned Assistant Government Pleader, we direct all concerned District Primary Education Officer, who are opponents in these applications, to give appointment to persons who are on the Waiting Lists in order of their merits to the posts which have become vacant on account of non joining by the selected candidates or upon resignation given by the selected candidates **subject to the limit of posts advertised.** We are sure that the appointments shall be made as soon as possible and preferably within one month from today." (Emphasis supplied).

The Division Bench has observed that these opportunities were available to the candidates of waiting list in order of their merits to the posts which have become vacant on account of non joining by the selected candidates or upon resignation given by the selected candidates **subject to the limit of posts advertised** means wait list cannot be operated beyond the limit of posts so advertised in the year of 2004.

Therefore, this arrangement, to operate further merit list is up to the post advertised by the department. According to the petitioner, initially post has been advertised for 644 posts. Recently, the posts have been advertised on 24/1/2007 for 738.

In view of this background, petitioner being candidate whose name has been included in wait list has no right to get appointment as per decision of Apex Court reported in AIR 2007 SC page 210 in case of Union of India and Ors Vs. V. B. Valluvan and others.

On 24/1/2007, advertisement has been issued which invited against existing vacancy occurred on the date of advertised that included the remaining post which has not been filled up from the select list of 2004. Therefore, moment the advertisement has been issued on 24/1/2007 the duration which was extended by the State Government or exempted comes to an end because it becomes a part and process of

subsequent advertised dated 24/1/2007. Therefore, this aspect which has been considered by this Court in SCA 20353 to 20373 of 2006 dated 1/3/2007, relevant observation made by this Court in para 5 are quoted as under:

> "5. I have considered the submissions made by both the learned advocates. It is a settled law laid down by the Apex Court that merely having the name in the merit list / wait list, it cannot give any legal right which can be enforced against the respondent by the petitioners.
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> 5.1 The Apex Court, in case of State of U.P. and Anr. v. Om Prakash and others, reported in 2006 (111) FLR 226, in Para.21, has observed as under :
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> "21. That apart this Court has consistently held that inclusion of candidate's name in merit list does not confer any indefeasible right to be appointed. (See : Shankarsan Dash v. Union of India, 1991 (62) FLR 981 (SC) and Union Territory of Chandigarh v. Dilbagh Singh, (1993) 1 SCC 154."

5.2 The petitioners were selected in respect to advertisement of 2004 and their names were included in the merit list / wait list. Thereafter, if any future vacancy arise, the petitioners have no legal right of appointment. (See : Union of India & Ors. v. B. Valluvan and others, AIR 2007 SC 210).

5.3 Recently, the Apex Court, in case of Union of India and Others v. B. Valluvan and others, reported in (2007) 1 SCC (L&S) 28, has in Para.10 and 17, as under :

“10. Recruitment process, as is well known, must be commensurate with the statute or the statutory rule operating in the field. We have noticed hereinbefore, advertisement was made for three posts. It was not indicated therein that another panel for filling up of the future vacancies was to be prepared by the Selection Committee. In the select list prepared by the Selection Committee, the name of the 1st respondent was at Sl. No.4.

Recommendations were made containing the names of 19 persons for future vacancies. Only because a panel has been prepared by the Selection Committee, the same by itself, in our opinion, would not means that the same should be given effect to irrespective of the fact that there was no such rule operating in the field. The Selection Committee was bound to comply with the selection process only in terms of the extant rules. It was bound to follow the stipulations made in the advertisement itself. Even in the advertisement it was not indicated that a select list would be prepared for filling up of future vacancies. The Selection Committee, having been appointed only for recommending the names of suitable candidates, who were fit to be appointed, could not have embarked upon the question as regards likelihood of future vacancies.

17. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do so.

The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained."

5.4 This Court cannot direct the respondents to operate merit list / wait list when duration of select list is for a period of one year is over. The State Government has extended the period only for limited purpose in light of the directions issued by this Court in respect to persons those who have resigned after

receiving the appointment order and persons those who have not reported after receiving the appointment order or in case of death. But, according to my opinion, that extended period also comes to an end a moment fresh advertisement has been issued by the respondent authorities which included vacancy which has been occurred on the date of advertisement, means the vacancy occurred due to death of a person and not reporting after receiving the appointment order and resignation after receiving the appointment order also included in the fresh advertisement issued by the respondent authorities in the year 2007. Therefore also, petitioners are not entitled to have legal right to get appointment once fresh advertisement has been issued on the basis of existing vacancy available at the time of issuing advertisement.

Once the duration of select list is over, this Court has no jurisdiction and power to direct the respondents to consider the case of petitioners for appointment, because petitioners are not having any legal and enforceable right merely their names have been included in the merit list / wait list. By passage of time, if petitioners become ineligible for the post of Vidhya Sahayak, that cannot be helped by this Court while exercising the power under Article 226 of the Constitution of India. The respondent authorities shall have to comply with the recruitment rules while filling up the post of Vidhya Sahayak and if any violation of that statutory rules, it amounts to vitiating the selection. Therefore, this Court cannot even direct the respondents to accommodate or to consider the present petitioners,

> those who are not eligible as per advertisement issued by the respondents. Therefore, in view of the aforesaid facts, the petitioners are not entitled to any relief as prayed for in the present petitions. The petitioners are not having any legal right to be considered for the post of Vidhya Sahayak. Therefore, there is no substance in the present petitions. Accordingly, present petitions are disposed of. Notice is discharged."

In view of the above observations and according to my opinion petitioner's name is included as candidate in wait list of 2004 can not have any legal right or enforceable legal right to get appointment on the basis of having name in wait list.

The exemption given by the State Government to the period of one year for the wait list is limited upto the date, on which fresh advertisement has been issued on 24/1/2007. The earlier process has technically come to an end because advertisement has been issued on the basis of existing vacancies which

are available with the respondent on the date of advertisement including vacancy which having accured due resignation, non-reporting and death of the candidates in respect of select list of 2004. Therefore, petitioner is having no legal right which can be enforced by way of writ of mandamus.

From perusal of record of the petition, it is not made clear by the petitioner that from select list how many vacancies accured due to resignation, death and non-reporting or not accepted appointment order. Petitioner is also not cleared that whether vacancy is available in respect to select list of 2004 or not. In absence of any averments in the writ petition, petitioner has not established any prima facie case in his favour because if any vacancy is available from select list of 2004 in the District and new advertisement published on 24/1/2007, then petitioner has no legal right to claim appointment when period of select list is over. The moment, new advertisement issued on the basis of existing vacancies available on the date of issuing advertisement, no claim of petitioners can be considered, and existing vacancy included in such Advertisement. Merely, name is included in the wait list, petitioner is not entitled for the right of appointment to the post of Vidhya Sahayak. The High Court can not extend the period of panel and also have no jurisdiction to issue direction to appoint the candidate from the said panel.

This aspect has been examined by the Apex Court in Case of Rani Lakshmibai Kshetriya Gramin Bank Vs. Chand Beharia Kapoor and others reported in AIR 1998 S.C. Page 3104, the relevant paras 9 and 12 are quoted as under:

> "9. Coming to the second question, it requires no detailed scrutiny and it is well established that inclusion of name in the list of successful candidates does not confer an indefeasible right to be appointed. It has been so held in the Constitution Bench decision of this Court in case of Shankarsan Dash Vs. Union of India, said case the Court has gone to the extent of following (at p. 1586 of AIR SCW):
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> "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which can not be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified selection they do not acquire any right to the post, the State is under no legal duty to fill up all or any of the vacancies."
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> 12. Though the panel ordinarily remains alive for one year but in accordance with the guidelines of the Government of India, Ministry of Finance it would be open to Board to extend the said period under intimation to the Government in Banking Division. In the case in hand the resolution of the Board dated 28/3/1985 indicates that the life of the panel had been extended by for a

> further period of six months, and therefore, after expiry of the said period it was not open for the Court to issue direction to appoint people from the said panel."

Therefore, there is no substance, in the present petition which required any interference by this Court. Accordingly, present petition is dismissed.

(H.K.RATHOD, J)

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